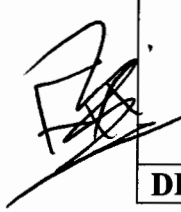


MONTEREY COUNTY BOARD OF SUPERVISORS



MEETING:	August 23, 2011	AGENDA NO.:
SUBJECT:	Authorize the Purchasing Manager for Natividad Medical Center (NMC) to execute a three-year Agreement with Manco Abbott Inc. for Property Management Services at NMC in an amount not to exceed \$225,000 in the aggregate for the period May 1, 2011 to April 30, 2014 and \$75,000 for the period including Fiscal Year 2010-11, May 1, 2011- June 30, 2011 and July 1, 2011 through June 30, 2012.	
DEPARTMENT:	Natividad Medical Center	

RECOMMENDATION:

It is recommended the Board of Supervisors authorize the Purchasing Manager for Natividad Medical Center (NMC) to execute a three-year Agreement with Manco Abbott Inc. for Property Management Services at NMC in an amount not to exceed \$225,000 in the aggregate for the period May 1, 2011 to April 30, 2014 and \$75,000 for the period including Fiscal Year 2010-11, May 1, 2011- June 30, 2011 and July 1, 2011 through June 30, 2012.

SUMMARY/DISCUSSION:

Manco Abbott purchased the previous property manager (Lynn Stockman & Associates) on January 1, 2006. Lynn Stockman & Associates had been servicing the properties for many years.

The Agreement requires Manco-Abbott to negotiate leases on behalf of the County using only model lease templates approved by County Counsel; to obtain approval by the Office of the County Counsel and formal approval of the County Board of Supervisors; to engage the Office of the County Counsel to assist it and the County in enforcing terms and conditions of leases with tenants of the County's property; and to initiate actions regarding enforcement of leases only with written permission from the Office of the County Counsel.

Mr. George Salcido of the Monterey County Property department has participated in meetings and activities in the past relating to their management of these properties.

As part of this agreement, there will be an imprest checking account established into which \$70,000 will be deposited by the County of Monterey. Any services performed on the facilities will be paid out of this account. The documents will be then submitted to the Auditor Controller's office for replenishment of the imprest account balance.

OTHER AGENCY INVOLVEMENT:

The Agreement has been reviewed and approved by County Counsel, the Auditor/Controller's office, and the Natividad Medical Center Board of Trustees' Finance Committee.

FINANCING:

The cost for this Agreement is \$225,000 plus the initial funding of the Imprest checking account for \$70,000 for a total of \$ 295,000. \$75,000 is included in the Fiscal Year 2011/2012 Adopted Budget. Amounts for remaining years of the Agreement will be included in those budgets as appropriate. The funding of the imprest checking account of \$ 70,000.00 will be carried on NMC's books as an asset. The period includes FY 2010-11 May 1, 2011- June 30, 2011 which has been paid. There is no impact to the General Fund.

Prepared by:

~~Chuck Vold, 755-4237~~

Hospital Controller

July 7, 2011

Attachments: Agreement, Board Order

Attachments are on file with the Clerk of the Board

Harry Weis

Chief Executive Officer

**Before the Board of Supervisors in and for the
County of Monterey, State of California**

Agreement No. A-12061

Authorize the Purchasing Manager for Natividad)
Medical Center (NMC) to execute a three-year)
Agreement with Manco Abbott Inc. for Property)
Management Services at NMC in an amount not to)
exceed \$225,000 in the aggregate for the period May)
1, 2011 to April 30, 2014 and \$75,000 for the period)
including Fiscal Year 2010-11, May 1, 2011- June)
30, 2011 and July 1, 2011 through June 30, 2012.....)

Upon motion of Supervisor Salinas, seconded by Supervisor Armenta, and carried by those members present, the Board hereby;

Authorized the Purchasing Manager for Natividad Medical Center (NMC) to execute a three-year Agreement with Manco Abbott Inc. for Property Management Services at NMC in an amount not to exceed \$225,000 in the aggregate for the period May 1, 2011 to April 30, 2014 and \$75,000 for the period including Fiscal Year 2010-11, May 1, 2011- June 30, 2011 and July 1, 2011 through June 30, 2012.

PASSED AND ADOPTED on this 23rd day of August, 2011, by the following vote, to wit:

AYES: Supervisors Armenta, Calcagno, Salinas, Parker, and Potter

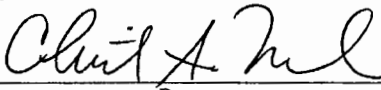
NOES: None

ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 75 for the meeting on August 23, 2011.

Dated: August 26, 2011

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By 
Deputy

PROPERTY MANAGEMENT AGREEMENT

This Property Management Agreement (this "Agreement") is made and entered into as of JUNE 8, 2011 by and between County of Monterey, C/O Natividad Medical Center (the "County") and MANCO ABBOTT Inc., (the "Contractor"). County and Contractor are sometimes referred to in this Agreement as a "Party" or, collectively, as the "Parties."

RECITALS

A. County owns that certain land and improvements commonly known as Natividad Office Complex (three building) consisting of approximately 85,658 rentable square feet of commercial office building space located at 1441 Constitution Blvd. Salinas, CA. 93906 and further identified in Schedule B (the "Property").

B. Contractor desires to provide property management services for the Property.

AGREEMENT

In consideration of the mutual covenants and agreements set forth herein, the Parties hereto agree as follows:

ARTICLE 1 CONTRACTOR'S DUTIES AND OBLIGATIONS

1.1 **Appointment.** County hereby appoints Contractor and Contractor thereby accepts the appointment to operate and manage the Property upon the terms and conditions set forth herein.

1.2 **Agency.** Unless this agency is revoked in writing sent by Contractor to County, MICHAEL S. GOLDFARB shall serve as Contractor's sole and exclusive agent ("Contractor Agent") for purposes of communicating with County concerning the rights and obligations of Contractor pertaining to this Agreement, and Contractor agrees to be bound by all actions and agreements made by the Contractor Agent prior to revocation notice being received by County.

1.3 **Contractor's Duties.** With regard to management of the Property, Contractor shall:

(a) manage and operate the Property in a commercially reasonable manner consistent with local industry practices;

(b) enforce all leases with tenants of the Property in accordance with their terms; and

(c) notify County of any matter, which in the opinion of Contractor is material to the operation of the Property.

1.4 **Services, Repairs and Maintenance.** Contractor shall maintain the Property in first-class operating condition comparable to that of other similar properties in the general market area in accordance with the then current Operating Budget. In connection therewith, Contractor shall conduct regular periodic property inspections at different times of the day, week, and month; shall make or cause to be made, and shall supervise all necessary repairs, replacements, alterations, improvements, decorations, landscaping and general property maintenance, so as to ensure the operating efficiency thereof. Contractor shall direct the purchase of all supplies, materials, and services necessary or advisable for the maintenance and operation of the Property, including but not limited to, utility services, janitorial services, window cleaning, building security, rubbish removal, landscaping and parking lot maintenance, and maintenance of all mechanical equipment and electrical and plumbing facilities. Contractor shall not add any profit or fee to the cost of such supplies or services furnished to the Property and shall rebate promptly to County all fees, profits, rebates or other value received by Contractor directly or indirectly from third parties in connection with such supplies and services.

1.5 **Operating Budget.** Contractor shall manage, supervise, and operate the Property pursuant to this Agreement in accordance with the operating budget. Contractor shall submit a budget in a mutually acceptable format for review and approval no later than November 30 for the following year ("Operating Budget"). The Operating Budget shall include suggested capital improvements, detailed suggestions for the improved operation of the Property, and detailed narrative. Contractor shall then be authorized, without the need for further approval, to make expenditures and incur the obligations set forth in the Operating Budget excluding capital items or repairs. County may subsequently modify the Operating Budget upon written notice to the Contractor, who shall thereafter, manage the Property in accordance with the modified Operating Budget. Contractor may recommend changes in the budget from time to time and shall implement such changes as approved by County. Contractor is not authorized to make any expenditure without prior written approval of County in excess of One Thousand Dollars (\$1,000) except as specified in this Section 1.5.

1.6 **Imprest Checking Account.** Contractor shall use and maintain an imprest checking account for the payment of supplies and services, expenses or charges incurred in the conduct of official County business under this Agreement ("Imprest Checking Account"), subject to the following terms and conditions:

(a) The County shall deposit an initial amount equal to Seventy Thousand Dollars (\$70,000) into the Imprest Checking Account.

(b) The Imprest Checking Account shall not be used for payment of any single item of expenditure in excess of Twenty Thousand Dollars Dollars (\$20, 000.00).

(c) Regardless of the amount, no disbursement shall be made for travel expenses incurred by Contractor or its employees, independent contractors or agents unless express authorized by the County Auditor-Controller.

(d) All disbursements shall be supported with an invoice or receipt, and must be approved by the Contractor Agent ("Voucher").

(e) Contractor must be able at all times to account for the Imprest Checking Account in the form of a cash balance and/or Vouchers on hand. Upon demand of the County

Auditor-Controller or Board of Supervisors, Contractor shall give an accounting of the fund as soon as reasonably practicable. Contractor shall report all disbursement activity, and prepare a financial report on each property by the tenth (10th) of the month following the month of activity. This information shall be forwarded to the Chief Executive Officer of Natividad Medical Center for review and processing to the Auditor Controllers office.

(f) Contractor shall report any shortage in the Imprest Checking Account to the County Auditor-Controller's Internal Audits Division. County Auditor-Controller's Internal Audits Division shall review the circumstances concerning the shortage and make recommendations to the Auditor-Controller as to the final disposition of the case. Overages in the Imprest Cash Fund shall be deposited into the Operating Account by issuing a receipt and depositing the overage amount as is done for other collections.

(g) County shall replenish the Imprest Checking Account upon approval of the expenditures.. The documentation submitted for the request for replenishment shall be made to the Auditor-Controller in accordance with its policies and procedures.

(h) The Parties shall review the adequacy of the balance in the Imprest Checking Account from time to time, but at least annually and the County will determine when an increase or decrease may be warranted in the Imprest Checking Account. When this is required, Contractor shall submit a written request indicating the justification for the increase and the amount of the increase shall be submitted to the County Board of Supervisors for approval. A decrease in or discontinuance of the Imprest Checking Account shall be submitted to the County Board of Supervisors for approval.

1.7 Extraordinary Expenses. Contractor may make payment for emergency repairs or services, not contemplated by the Operating Budget, but Natividad Medical Center engineering department must be notified and concur with the emergency repair.

1.8 Lease Administration.

(a) Contractor shall negotiate leases on behalf of County or NMC using only model lease templates approved by County. Contractor shall at all times and in all respects comply with, and shall ensure that all such leases negotiated on behalf of County or NMC complies with, all laws, statutes, ordinances and governmental rules, regulations, orders or requirements, including without limitation, the federal Anti-kickback Statute (42 U.S.C. § 1320a-7b(b)), the Stark Law (42 U.S.C. § 1395nn), and any applicable state fraud and abuse prohibitions, including those that apply to all payors (governmental, commercial insurance and self-payors). Contractor hereby agrees to indemnify County, NMC, its respective officers, supervisors, trustees, employees and agents, from and against any and all liability, cost, loss, penalty or expense (including, without limitation, attorneys' fees and court costs) incurred by County or NMC resulting from negligent acts or negligent omissions of Contractor with respect to this Section 1.9(a).

(b) Contractor cannot enter into any leases on behalf of the County. All leases shall be made only upon approval by the Office of the County Counsel and by formal approval of the County Board of Supervisors.

(c) At County's expense and as necessary, Contractor is authorized to engage the Office of the County Counsel to assist Contractor and County in the enforcement of lease terms and conditions for tenants of County's property. Contractor may institute such actions, either in the County's or Contractor's name to collect money, obtain possession, sue for specific performance or the recovery of damages and otherwise enforce and protect the rights of the County. For the purposes of legal action for possession of County's property or collection of rents and damages, Contractor is not required to obtain advance authority to serve notices for any unlawful detainer or for collection of money owing from a tenant, but cannot initiate any litigation or retain outside counsel to represent the County or NMC without written permission from the Office of the County Counsel. Contractor shall notify the Office of the County Counsel within twenty-four (24) hours of receipt of any cross-complaint or other claim brought or otherwise asserted by a tenant in any litigation. Contractor cannot enter into any settlement of litigation on behalf of the County without written permission from the Office of the County Counsel.

1.9 **Employee/Independent Contractors.** Contractor shall pay and supervise all persons reasonably required to carry out Contractor's responsibilities hereunder. Contractor shall have the sole responsibility for all matters related to all such contractors, including laws and regulations having to do with payroll withholdings, worker's compensation, social security, unemployment insurance, hours of labor, wages, and working conditions. All employees of the County shall have their benefits, health insurance, vacation time and wages/salaries paid by County. Contractor shall be responsible for the supervision and direction of any and all independent contractors or other third parties performing services for the Property.

1.10 **Monthly Operating Reports.** Contractor shall deliver County each calendar month, by the tenth (10th) of each month, an operating report for the prior month which includes an itemized statement of all receipts and expenditures with a variance analysis to the Operating Budget and an operating summary. As reasonably requested by County, Contractor agrees to provide additional monthly reports and back-up documentation.

1.11 **Records and Document.** Contractor shall maintain complete and accurate records of all transactions relating to the Property, e.g., copies of all contracts, invoices, receipts, and other documents relating thereto. Such records and documents shall be available for inspection by the County during normal business hours.

1.12 **Confidentiality.** Contractor shall maintain all books, records, operating statements, leases and other material or information relevant to the operation or financial nature of the Property in the strictest confidence and shall not be available to any employee or salesperson of any affiliate of Contractor, nor to any other party without the prior written consent of County.

1.13 **Government Compliance.** Contractor shall, at County's expense, comply with all applicable building codes, zoning and licensing requirements, and other governmental laws, ordinance and regulations affecting the Property. Contractor shall assist County in opposing or appealing any government regulations, requirements, tax invoice, assessment or other charge deemed unwarranted by County. Contractor shall promptly notify Count of all contact with local governmental.

1.14 **Conflict of Interest.** Contractor shall disclose to County any financial or other interest, which Contractor may have, or intend to have, in any company, organization or individual, which provides goods or services for the management or operation of the Property.

1.15 **Performance Standards.**

(a) Contractor warrants that Contractor and its agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of County or NMC, or immediate family of an employee of County or NMC.

(b) Contractor, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.

(c) Contractor shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. Contractor shall not use County or NMC premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

1.16 **Non-Discrimination.** During the performance of this Agreement, Contractor, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious, creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40) or sexual orientation, either in Contractor's employment practices or in the furnishing of services to others. Contractor shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. Contractor and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

1.17 **Compliance with Terms of State or Federal Grant.** If this Agreement has been or will be funded with monies received by NMC or County pursuant to a contract with the state or federal government in which NMC or County is the grantee, Contractor shall comply with all the provisions of said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, NMC shall deliver a copy of said contract to Contractor at no cost to Contractor.

1.18 **Independent Contractor.** In the performance of work, duties, and obligations under this Agreement, Contractor is at all times acting and performing as an independent Contractor and not as an employee of NMC or County. No offer or obligation of permanent employment with NMC or particular County department or agency is intended in any manner, and Contractor shall not become entitled by virtue of this Agreement to receive from NMC or

County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. Contractor shall be solely liable for an obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of Contractor's performance of this Agreement. In connection therewith, Contractor shall defend, indemnify, and hold NMC and County harmless from any and all liability, which NMC or County may incur because of Contractor's failure to pay such taxes.

ARTICLE 2

COMPENSATION

2.1 **Compensation.** As the total compensation due to the Contractor performance of its services hereunder, County agrees to pay Contractor in accordance with Schedule A. The total amount payable by County to Contractor under this Agreement shall not exceed the sum of Seventy-Five Thousand Dollars (\$75,000) per twelve (12) month period during the term of this Agreement (each, a "Contract Year"). Contractor shall not receive reimbursement for travel expenses unless set forth in this Agreement.

2.2 **Timing of Payment.** Contractor shall submit to the County Contract Administrator an invoice on a form acceptable to County. If not otherwise specified, the Contractor may submit such invoice periodically or at the completion of services, but in any event, not later than thirty (30) days after completion of services. The invoice shall set forth the amounts claimed by Contractor for the previous period, together with an itemized basis for the County Administrator or his or her designee to certify the invoice, either in the requested amount or in such other amount as County approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within thirty (30) days of receiving the certified invoice.

2.3 **Reimbursement.** County shall promptly reimburse Contractor for any out-of-pocket expenditures made by Contractor for the sole benefit of the Property, provided said expenditure is included in the Operating Budget, is approved by County, or otherwise permitted by this Agreement.

ARTICLE 3

INSURANCE AND INDEMNIFICATION

3.1 **Evidence of Coverage.** Prior to commencement of this Agreement, Contractor shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, Contractor upon request shall provide a certified copy of the policy or policies. This verification of coverage shall be sent to NMC's Medical Staff Office, unless otherwise directed. Contractor shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and NMC has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of Contractor.

3.2 **Qualifying Insurers.** All coverages except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by NMC's Contracts/Purchasing Director.

3.3 **Insurance Coverage Requirements.** Without limiting Contractor's duty to indemnify, Contractor shall maintain in effect throughout the term of this Agreement, at Contractor's sole cost and expense, a policy or policies of insurance with the following minimum limits of liability:

(a) **Commercial general liability insurance,** including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than One Million Dollars (\$1,000,000) per occurrence.

☐ Exemption/Modification (Justification attached; subject to approval).

(b) **Business automobile liability insurance,** covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than One Million Dollars (\$1,000,000) per occurrence.

☐ Exemption/Modification (Justification attached; subject to approval).

(c) **Workers' Compensation Insurance,** If Contractor employs others in the performance of this Agreement, in accordance with California Labor Code Section 3700 and with Employer's Liability limits not less than One Million Dollars (\$1,000,000) each person, One Million Dollars (\$1,000,000) each accident and One Million Dollars (\$1,000,000) each disease.

☐ Exemption/Modification (Justification attached; subject to approval).

3.4 **Other Insurance Requirements.** All insurance required by this Agreement shall be with a company acceptable to NMC and issued and executed by an admitted insurer authorized to transact insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three (3) years following the date Contractor completes its performance of services under this Agreement.

Each liability policy shall provide that NMC shall be given notice in writing at least thirty (30) days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional insured with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of Contractor's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by Contractor's insurance. The required endorsement from for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement from for Automobile Additional Insured Endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by NMC, Contractor shall file certificates of insurance with NMC's Medical Staff Office, showing that Contractor has in effect the insurance required by this Agreement. Contractor shall file a new or amended certificate of insurance within five (5) calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

Contractor shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by NMC, annual certificates to NMC's Medical Staff Office. If the certificate is not received by the expiration date, NMC shall notify Contractor and Contractor shall have five (5) calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by Contractor to maintain such insurance is a default of this Agreement, which entitles NMC, at its sole discretion, to terminate the Agreement immediately.

3.5 Right to Offset Insurance Costs. In the event that Contractor does not purchase the liability insurance set forth in this Section, and without limiting any rights or remedies of County, County may at its option and within its sole discretion provide the liability insurance required by this Section and continue to pay the premiums therefor. If Contractor does not promptly reimburse all such amounts, then County shall have the right to withhold and offset the compensation due to Contractor under this Agreement, in addition to such other rights or privileges as County may have at law or in equity.

3.6 Indemnification. Contractor shall indemnify, defend and hold harmless, County and NMC, its respective officers, agents and employees from any and all claims, liability, losses, whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the Contractor's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of County or NMC. "Contractor's performance" includes Contractor's action or inaction and the action or inaction of Contractor's officers, employees, agents and subcontractors.

ARTICLE 4

TERM AND TERMINATION

4.1 **Term.** The term of this Agreement is from May 1, 2011 to April 30, 2014 unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both Contractor and County and with County signing last. Contractor may not commence work before County signs this Agreement.

4.2 **Termination.**

(a) During the term of this Agreement, County may terminate the Agreement for any reason by giving written notice of termination to Contractor at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.

(b) County may cancel and terminate this Agreement for good cause effective immediately upon written notice to Contractor. "Good cause" includes the failure of Contractor to perform the required services at the time and in the manner provided under this Agreement. If County terminates this Agreement for good cause, County may be relieved of the payment of any consideration to Contractor, and County may proceed with the work in any manner, which County deems proper. The cost to County shall be deducted from any sum due the Contractor under this Agreement.

(c) Upon termination or expiration of this Agreement, Contractor shall promptly deliver to County complete copies of all books and records maintained by Contractor for the Property and all funds in possession of Contractor belonging to County or received by Contractor with regard to the Property.

ARTICLE 5

RECORDS AND CONFIDENTIALITY

5.1 **Confidentiality.** Contractor and its officers, employees, agents and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. Contractor shall not disclose any confidential records or other confidential information received from NMC or County or prepared in connection with the performance of this Agreement, unless NMC specifically permits Contractor to disclose such records or information. Contractor shall promptly transmit to NMC any and all requests for disclosure of any such confidential records or information. Contractor shall not use any confidential information gained by Contractor in the performance of this Agreement except for the sole purpose of carrying out Contractor's obligations under this Agreement.

5.2 **NMC Records.** When this Agreement expires or terminates, Contractor shall return to NMC any NMC records which Contractor used or received from NMC to perform services under this Agreement.

5.3 **Maintenance of Records.** Contractor shall prepare, maintain, and preserve all reports and records that may be required by federal state, and County rules and regulations related to services performed under this Agreement. Contractor shall maintain such records for a period of at least three (3) years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three (3) year period, then Contractor shall retain said records until such action is resolved.

5.4 **Access to and Audit of Records.** NMC shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the Contractor and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess or Ten Thousand Dollars (\$10,000), the Parties may be subject, at the request of NMC or as part of any audit of NMC, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

5.5 **Royalties and Inventions.** NMC shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize other to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. Contractor shall not publish any such material without the prior written approval of NMC.

ARTICLE 6 **GENERAL PROVISIONS**

6.1 **Conflict of Interest.** Contractor represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this Agreement.

6.2 **Amendment.** This Agreement may be amended or modified only by an instrument in writing signed by NMC, County and the Contractor.

6.3 **Waiver.** Any waiver of any terms and conditions of this Agreement must be in writing and signed by NMC, County and the Contractor. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.

6.4 **Contractor.** The term "Contractor" as used in this Agreement includes Contractor's officers, agents, and employees acting on Contractor's behalf in the performance of this Agreement.

6.5 **Notices.** Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to NMC and Contractor's contract administrators at the addresses listed below.

If to NMC: Contracts/Purchasing Manager
 1441 Constitution Blvd.
 Salinas, CA 93906
 Telephone: (831) 755-4111

If to Contractor: Manco Abbott Inc.
 6051 N. Fresno St., Suite #110
 Fresno, CA 93710
 Telephone: (559) 256-4050
 Attention: Michael S. Goldfarb, Chief Operation Officer

6.6 **Disputes.** Contractor shall continue to perform under this Agreement during any dispute.

6.7 **Assignment and Subcontracting.** The Contractor shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of NMC. None of the services covered by this Agreement shall be subcontracted without the prior written approval of NMC. Notwithstanding any such subcontract, Contractor shall continue to be liable for the performance of all requirements of this Agreement.

6.8 **Successors and Assigns.** This Agreement and the rights, privileges, duties, and obligations of NMC and Contractor under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.

6.9 **Compliance with Applicable Law.** The Parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.

6.10 **Headings.** The headings are for convenience only and shall not be used to interpret the terms of this Agreement.

6.11 **Time is of the Essence.** Time is of the essence in each and all of the provisions of this Agreement.

6.12 **Governing Law.** This Agreement shall be governed by and interpreted under the laws of the State of California.

6.13 **Non-exclusive Agreement.** This Agreement is non-exclusive and both NMC and Contractor expressly reserve the right to contract with other entities for the same or similar services.

6.14 **Construction of Agreement.** NMC and Contractor agree that each Party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.

6.15 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

6.16 **Integration.** This Agreement, including the exhibits, represents the entire Agreement between NMC and the Contractor with respect to the subject matter of this Agreement and shall supersede all prior negotiations. Representations, or agreements, either written or oral, between NMC and Contractor as of the effective date of this Agreement, which is the date that NMC signs the Agreement.

6.17 **Interpretation of Conflicting Provisions.** In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

[signature page follows]

The Parties have executed this Agreement on the date first above written, and signify their agreement with duly authorized signatures.

CONTRACTOR MAYCO ABBOTT, INC

By: [Signature]
Its: COO
CARD # 01161727
Tax I.D. No. 94-2169439

Date: JUNE 8, 2011

COUNTY OF MONTEREY

By: [Signature]
Contracts /Purchasing Manager

Purchase Order Number

Date: 6-30, 2011

Tax I.D. No. 94-6000524

By: [Signature]
Natividad Medical Center Representative

Date: 6/11, 2011

APPROVED AS TO LEGAL FORM:
CHARLES J. McKEE, County Counsel

[Signature]
Stacy Saetta, Deputy County Counsel

DATE: 6/30, 2011

Reviewed as to fiscal provisions

[Signature]
Auditor-Controller
County of Monterey

7-5-11

SCHEDULE A

1. **For Management Services:** Contractor shall receive a monthly fee of Five Thousand Dollars (\$5,000.00).
2. **For Lease Renewals of Existing Tenants:** An hourly rate to be determined at time of lease negotiation, not to exceed Two Thousand Five Hundred Dollars (\$2,500.00) per lease renewal.
3. **For Representing County as County's Contractor for Modernization (Rehabilitation/Construction) or Fire Restoration:** County and Contractor shall negotiate the list of services provided by and fees to the Contractor that must be agreed upon in writing by both Parties in advance of any such work and consistent with County's normal contract approval or amendment process.
4. **Software Licensing Fee:** Contractor shall receive a fee of Seven Hundred Dollars (\$700.00) per Contract Year for property specific account/management software.
5. **Late Fee Collections:** If the lease or rental agreement contains a "late fee" charge, Contractor shall be entitled to up to Fifty Percent (50%) of such fee as additional compensation for the time and expenses incurred by Contractor to collect the delinquent rent payment, not to exceed an amount equal to Two Thousand Dollars (\$2,000) per Contract Year.
6. **Bad Debt Collection:** Contractor shall utilize NMC's collection agency to collect any monies owed County after Tenant has vacated the space.
7. **Signs:** County hereby gives Contractor permission to place a "Managed by: Manco Abbott, Inc." sign on the premises. Said sign shall be of reasonable style and dimensions and shall be presented to County for approval prior to installation.

mn

SCHEDULE B

